

HONORABLE JAMES L. ROBERT

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JOSEPH J. HESKETH III, on his behalf
and on behalf of other similarly situated
persons,

Plaintiff,

v.

TOTAL RENAL CARE, INC., on its own
behalf and on behalf of other similarly
situated persons,

Defendant.

No. 2:20-cv-01733-JLR

DEFENDANT TOTAL RENAL CARE
INC.'S ANSWER TO PLAINTIFF'S
SECOND AMENDED COMPLAINT

Defendant Total Renal Care, Inc. ("Defendant" or "TRC") answers Plaintiff Joseph J. Hesketh's ("Plaintiff") Second Amended Complaint ("Complaint") as follows in paragraphs numbered to correspond to the paragraph numbers in the Complaint.

Except as specifically admitted, qualified, or otherwise answered, Defendant denies every allegation in the Complaint.

I. OVERVIEW

1. The first sentence of paragraph one contains a legal conclusion to which a response is not required. Defendant denies the allegations of the second sentence of paragraph 1.

2. Defendant admits DaVita Inc. was formerly known as Total Renal Care Holdings, Inc. Defendant admits there are approximately 56,973 DaVita teammates in the United States,

ANSWER TO SECOND AMENDED
COMPLAINT (No. 2:20-cv-01733-JLR) –1

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1 according to DaVita's records as of November 30, 2020. Defendant denies it operates a "profit-
2 driven" business model; it is a for-profit business comprised of DaVita (the parent company) and
3 multiple subsidiaries, including Total Renal Care, Inc. Except as expressly admitted, Defendant
4 denies the allegations in paragraph 2.

5 3. Defendant admits that it is a wholly-owned subsidiary of DaVita and that DaVita
6 has 34 subsidiaries that have employed teammates during the relevant time period. Defendant
7 also admits there is a single payroll system and pay practices utilized to administer payroll across
8 the 34 subsidiaries. Except as expressly admitted, Defendant denies the allegations in
9 paragraph 3.

10 4. Defendant admits it uses the term "village" to refer to the DaVita community.
11 Defendant admits the DaVita logo appears on employees' paychecks. The legal entity under
12 which the employee is paid (e.g., Total Renal Care, Inc.) is also listed on employees' paychecks.
13 Except as expressly admitted, Defendant denies the allegations in paragraph 4.

14 5. Defendant admits that, according to DaVita's 2019 SEC Form 10-K, DaVita
15 "provided dialysis and administrative services and related laboratory services throughout the
16 U.S. via a network of 2,753 outpatient dialysis centers in 46 states and the District of Columbia."
17 The 2019 Form 10-K speaks for itself. Except as expressly admitted, Defendant denies the
18 allegations in paragraph 5.

19 6. Defendant admits that, according to DaVita's 2019 SEC Form 10-K, DaVita
20 provided administrative services through a network of 2,753 outpatient dialysis centers in the
21 United States. The 2019 Form 10-K speaks for itself. Defendant operates 64 outpatient dialysis
22 centers in Washington state. Except as expressly admitted, Defendant denies the allegations in
23 paragraph 6.

24 7. Defendant admits Plaintiff was hired June 11, 2007 and has been employed by
25 TRC for more than thirteen years and currently works as an IT Specialist and has worked on a
26

1 fully remote basis during the COVID-19 pandemic. Except as expressly admitted, Defendant
2 denies the allegations in paragraph 7.

3 8. Defendant admits the slogan “We Said, We Did” appears in internal
4 communications. Except as expressly admitted, Defendant denies the allegations in paragraph 8.

5 9. Defendant admits DaVita maintains an employee handbook, which in January
6 2020 was titled “Teammate Policies.” The document speaks for itself. Employees annually
7 acknowledge they have read, understand, and will adhere to DaVita’s employment policies and
8 any changes to those policies. Plaintiff Joseph Hesketh III signed such an acknowledgement
9 related to the January 2020 Teammate Policies. Declaration of Shawn Zuckerman (“Zuckerman
10 Decl.”) at ¶ 5, Ex. 4. The January 2020 Teammate Policies handbook contains an express
11 disclaimer that the policies do not create a contract of employment, either express or implied. *Id.*
12 at ¶ 2, Ex. 1. Except as expressly admitted, Defendant denies the allegations in paragraph 9.

13 10. Defendant admits the Teammate Policies handbook is made available to
14 employees via DaVita’s intranet, VillageWeb. Employees acknowledge they understand and
15 will adhere to the Teammate Policies and attest they have read the policies in the StarLearning
16 program. The “Teammate Acknowledgement” page in the StarLearning program states, “DaVita
17 reserves the right to interpret, amend, modify, supersede, or eliminate policies, practices, or
18 benefits ... described in these policies ... in its sole and absolute discretion. ... I understand that
19 the Teammate Policies, the Code of Conduct, and the DaVita Compliance program and their
20 contents are not intended to create any contractual or legal obligations, express or implied,
21 between DaVita and its teammates” *See* Zuckerman Decl. ¶ 5, Ex. 4. Except as expressly
22 admitted, Defendant denies the allegations in paragraph 10.

23 11. The allegations in paragraph 11 are not factual allegations for which an answer is
24 required. To the extent the paragraph contains factual allegations, Defendant denies the
25 allegations in paragraph 11.
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1 12. Defendant admits employees are required to acknowledge the Teammate Policies
2 handbook. The remaining allegations in paragraph 12 are not factual allegations for which an
3 answer is required. To the extent the paragraph contains factual allegations, except as expressly
4 admitted, Defendant denies the allegations in paragraph 12.

5 13. Defendant admits that DaVita tracks which employees have or have not submitted
6 an acknowledgment of the Teammates Policies handbook. Except as expressly admitted,
7 Defendant denies the allegations in paragraph 13.

8 14. Defendant admits that the Teammate Policies handbook disclaims that the
9 handbook is a contract. The disclaimer at the front of the Teammate Policies says:

10 The Teammate Policies are designed to acquaint teammates with DaVita Inc. and
11 provide some information about working at DaVita. These policies are not all-
12 inclusive, but are intended to provide a summary of some of DaVita's policies.
This edition replaces the Teammate Guidelines and all previously issued editions.

13 Employment with DaVita is at-will. Just as all teammates have the right to end
14 their work relationship with DaVita, with or without notice, and with or without
15 cause, so too does DaVita have the same right. The language used in these
16 policies and any verbal statements made by management are not intended to
constitute a contract of employment, either express or implied, and they are not a
guarantee of employment for a specific duration or any change to DaVita's policy
of at-will employment. The policy of at-will employment can only be modified in
writing, signed by a senior executive officer of the company.

17 The Teammate Policies have been provided to offer guidance in handling many
18 issues, but the policies also allow for latitude in their application to individual
19 circumstances or as the needs of our business may warrant. Except for the policy
of at-will employment, any policy may be canceled or modified at any time, at
DaVita's sole discretion, with or without prior notice.

20 *See* Zuckerman Decl. ¶ 2, Ex 1. The document speaks for itself. According to Plaintiff,
21 DaVita's contract disclaimers are written everywhere. Except as expressly admitted, Defendant
22 denies the allegations in paragraph 14.

23 15. Defendant admits that the Teammate Policies handbook disclaims that the
24 handbook is a contract. Defendant incorporates by reference its response in paragraph 14. *See*
25 Zuckerman Decl. ¶ 2, Ex 1. The document speaks for itself. Except as expressly admitted,
26 Defendant denies the allegations in paragraph 15.

1 16. Defendant admits that it provides its teammates with the Teammate Policies, the
2 Code of Conduct, and the DaVita Compliance program; teammates are trained on the policies;
3 and teammates are annually asked to acknowledge that they have read, understand and agree to
4 adhere to the policies. Teammates sign an acknowledgment which states:

5 As a DaVita teammate, I understand I am expected to read, understand and adhere
6 to our Company's policies. I will familiarize myself with the material in the
7 Teammate Policies, the Code of Conduct and the DaVita Compliance Program, as
8 well as any changes to them. I understand that these policies and programs can be
9 found on DaVita's VillageWeb and the People Services Page. There will be a
10 work station available to me upon reasonable request with access to the
11 VillageWeb where these programs and policies may be found. I understand that I
12 am governed by the contents of the Teammates Policies, the Code of Conduct,
13 and the DaVita Compliance Program, and I recognize that DaVita reserves the
14 right to interpret, amend, modify, supersede or eliminate policies, practices or
15 benefits (except employment at-will policies) described in these policies from
16 time-to-time in its sole and absolute discretion. No oral amendment to any policy
17 or benefit described herein shall be effective.

18 I understand that the Teammate Policies, the Code of Conduct and the DaVita
19 Compliance Program and their contents are not intended to create any contractual
20 or legal obligations, express or implied, between DaVita and its teammates;
21 however, these policies do set forth the entire employment arrangement between
22 me and DaVita with respect to the at-will nature of my employment relationship
23 with DaVita. Unless otherwise specified in a written contract of employment
24 signed by me and a duly authorized official of DaVita, I recognize that my
25 employment has no specific term and is at the mutual consent of myself and
26 DaVita. Accordingly, either DaVita or I can terminate my employment
relationship at any time, with or without cause, with or without notice.

18 *See* Zuckerman Decl. ¶ 5, Ex 4. Plaintiff signed this acknowledgement on January 8, 2020. *Id.*
19 The document speaks for itself. Except as expressly admitted, Defendant denies the allegations
20 in paragraph 16.

21 17. Defendant admits that the contents of the Teammate Policies, the Code of
22 Conduct, and the DaVita Compliance Program neither alter the at-will employment status of
23 teammates nor create a contractual or legal obligation. The Teammate Acknowledgment speaks
24 for itself. Defendant incorporates by reference its response in paragraph 16. *See* Zuckerman
25 Decl. ¶ 5, Ex 4. Except as expressly admitted, Defendant denies the allegations in paragraph 17.
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1 18. Defendant admits that, on an annual basis, it asks all employees to review the
2 Teammate Policies, including any changes that have been made to the policies since employees'
3 last review, and sign the acknowledgement described in Paragraph 16 of this Answer. Defendant
4 incorporates by reference its response in paragraph 16. *See* Zuckerman Decl. ¶ 5, Ex 4. Except
5 as expressly admitted, Defendant denies the allegations in paragraph 18.

6 19. Defendant admits that it provides its teammates with access to the Teammate
7 Policies; teammates are trained on the policies; and teammates are annually asked to
8 acknowledge that they have read, understand, and agree to adhere to the policies. Defendant
9 incorporates by reference its response in paragraph 16. *See* Zuckerman Decl. ¶ 5, Ex 4. Except
10 as expressly admitted, Defendant denies the allegations in paragraph 19.

11 20. Defendant admits that DaVita's disclaimers are clear that the policies can be
12 changed at any time at DaVita's sole and absolute discretion, with or without prior notice.
13 Defendant incorporates by reference its responses in paragraphs 14 and 16. *See* Zuckerman
14 Decl. ¶ 2, Ex. 1; ¶ 5, Ex 4. The documents speak for themselves. Except as expressly admitted,
15 Defendant denies the allegations in paragraph 20.

16 21. Defendant denies the allegations in paragraph 21 in their entirety.

17 22. Defendant admits that the Teammate Policies, the Code of Conduct, and DaVita
18 Compliance Program apply to Defendant's employees. Except as expressly admitted, the
19 remaining allegations in paragraph 22 are legal conclusions, not factual allegations; an answer is
20 not required. To the extent the paragraph contains factual allegations, Defendant denies the
21 allegations in paragraph 22.

22 23. Defendant admits that the Teammate Policies are guidelines that reflect
23 expectations of employees as well as provide information regarding resources and other benefits
24 available to its employees. Except as expressly admitted, Defendant denies the allegations
25 contained in paragraph 23.
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1 24. Defendant admits that “Integrity” is a core value at DaVita. Defendant also
2 admits the slogan “We Said, We Did” appears in internal communications. Except as expressly
3 admitted, the remaining allegations in paragraph 24 are not factual allegations and/or are legal
4 conclusions or argument for which an answer is not required. To the extent the paragraph
5 contains factual allegations, Defendant denies the allegations in paragraph 24.

6 25. Defendant admits that the Teammate Policies, the Code of Conduct, and DaVita
7 Compliance Program apply to Defendant’s employees. Except as expressly admitted, the
8 remaining allegations in paragraph 25 are not factual allegations and/or are legal conclusions or
9 argument for which an answer is not required. To the extent the paragraph contains factual
10 allegations, Defendant denies the allegations in paragraph 25.

11 26. The allegations in paragraph 26 are not factual allegations and/or are legal
12 conclusions or argument for which an answer is not required. To the extent the paragraph
13 contains factual allegations, Defendant denies the allegations in paragraph 26.

14 27. Defendant denies the allegations contained in paragraph 27. As the Teammate
15 Policies provide, “Employment with DaVita is at-will. Just as all teammates have the right to
16 end their work relationship with DaVita, with or without notice, and with or without cause, so
17 too does DaVita have the same right.” *See* Zuckerman Decl. ¶ 2, Ex 1. Teammates also
18 acknowledge: “I recognize that my employment has no specific term and is at the mutual consent
19 of myself and DaVita. Accordingly, either DaVita or I can terminate my employment
20 relationship at any time, with or without cause, with or without notice.” *Id.* ¶ 5, Ex. 4. The
21 documents speak for themselves.

22 28. Defendant admits the January 2020 Teammate Policies handbook included a
23 “Disaster Relief Policy.” This policy speaks for itself. Zuckerman Decl. ¶ 3, Ex. 2. Except as
24 expressly admitted, Defendant denies the allegations in paragraph 28.

25 29. Defendant incorporates by reference its response in paragraph 16. *See* Zuckerman
26 Decl. ¶ 5, Ex 4. Except as expressly admitted, Defendant denies the allegations in paragraph 29.

1 30. Defendant admits the January 2020 Teammate Policies handbook includes a
2 Section 4 titled “Pay Practices.” The document speaks for itself. Except as expressly admitted,
3 Defendant denies the allegations in paragraph 30.

4 31. Defendant denies the allegations in paragraph 31 in their entirety.

5 32. Defendant admits that its pay policies and pay practices “may be canceled or
6 modified at any time, at DaVita’s sole discretion, with or without prior notice.” Zuckerman
7 Decl. ¶ 2, Ex. 1. Defendant also admits that “DaVita reserves the right to interpret, amend,
8 modify, supersede or eliminate policies, practices or benefits (except employment-at-will
9 policies) described in [the Teammate Policies] from time-to-time in its sole and absolute
10 discretion.” *Id.* ¶ 5, Ex. 4. Except as expressly admitted, Defendant denies the allegations in
11 paragraph 32.

12 33. Defendant admits that the Teammate Policies provide employment guidelines as
13 well as information regarding resources and benefits available to teammates. *See* Zuckerman
14 Decl. ¶ 2, Ex. 1. Except as expressly admitted, Defendant denies the allegations in paragraph 33.

15 34. Defendant admits that Section 4 of the Teammate Policies is titled “Pay Practices”
16 and covers topics such as paydays, hours of work, rest breaks and meal periods, and expense and
17 reimbursement. The document speaks for itself. Except as expressly admitted, Defendant denies
18 the allegations in paragraph 34.

19 35. Defendant admits that Section 4.5 of the Teammate Policies (titled “Hours of
20 Work (Outside of California)”) contains a subsection related to payment of overtime. The
21 document speaks for itself. Except as expressly admitted, Defendant denies the allegations in
22 paragraph 35.

23 36. Defendant admits that Section 4.12 of the Pay Practices Section of the Teammate
24 Policies is titled the “Disaster Relief Policy.” Defendant admits that the Disaster Relief Policy
25 provides pay continuance during a specifically identified emergency time frame at identified
26 affected facilities or business offices. To incentivize teammates to continue to assist with

1 essential life-saving patient care and supportive functions during a natural disaster such as a
2 hurricane, wildfire, or ice storm, premium pay is offered to those who are able to make it to work
3 at an open facility or office despite challenges such as significant property damage, flooding,
4 road closures, power outages, lack of water, or other significant disruptions. The Disaster Relief
5 Policy provides that teammates who choose to or are forced by circumstances to shelter from a
6 natural disaster rather than report to work at an open facility/office may take PTO. The Disaster
7 Relief Policy also addresses other situations such as if a facility or office is closed or is open only
8 limited hours. The Disaster Relief Policy also states, “The language used in this policy is not
9 intended to constitute a contract of employment, either express or implied, to give teammates any
10 additional rights to continued employment, pay or benefits, or to otherwise change DaVita’s
11 policy of at-will employment.” Zuckerman Decl. ¶ 3, Ex. 2. The document speaks for itself and
12 must be read in its entirety. Except as expressly admitted, Defendant denies the allegations in
13 paragraph 36.

14 37. Defendant admits the Disaster Relief Policy states, “The Disaster Relief Policy
15 provides for pay continuance during an emergency time frame when a declared emergency or
16 natural disaster prevents teammates for performing their regular duties.” Zuckerman Decl. ¶ 3,
17 Ex. 2. The policy also states, “The emergency time frame (and affected facility or business
18 office) will be identified on a case-by-case basis by local leadership (DVP, GVP and PSD) and
19 the Disaster Governance Council, dependent on the severity of the disaster and location.” *Id.*
20 The document speaks for itself and must be read in its entirety. Except as expressly admitted,
21 Defendant denies the allegations in paragraph 37.

22 38. The document speaks for itself and must be read in its entirety. Zuckerman Decl.
23 ¶ 3, Ex. 2. Defendant admits the Disaster Relief Policy: “provides for pay continuance [1]
24 during an emergency time frame when [2] a declared emergency or natural disaster [3] prevents
25 teammates from performing their regular duties.” Defendant also admits that as of January 2018,
26 a “declared emergency or natural disaster” may be “proclaimed by either [1] the President of the

1 United States, [2] a state Governor or other elected official, or [3] if local leadership
2 (DVP/Palmer) deems it appropriate.” *Id.* Except as expressly admitted, Defendant denies the
3 allegations in paragraph 38.

4 39. The document speaks for itself and must be read in its entirety. Zuckerman Decl.
5 ¶ 3, Ex. 2. Defendant admits that the Disaster Relief Policy provides, “The emergency time
6 frame (and affected facility or business office) will be identified on a case-by-case basis by local
7 leadership (DVP, GVP and PSD) and the Disaster Governance Council, dependent on the
8 severity of the disaster and location.” *Id.* Defendant also admits that if an “emergency time
9 frame” has been declared, then the Disaster Relief Policy provides for premium pay for
10 teammates who “report to their location and work their scheduled hours.” *Id.* Except as
11 expressly admitted, Defendant denies the allegations in paragraph 39.

12 40. The document speaks for itself and must be read in its entirety. Zuckerman Decl.
13 ¶ 3, Ex. 2. Except as expressly admitted, Defendant denies the allegations in paragraph 40.

14 41. Defendant admits the Disaster Relief Policy states, “Unless state law requires
15 otherwise, premium pay will be one-and-one half (1.5) times the teammate’s base rate of pay.”
16 Except as expressly admitted, Defendant denies the allegations in paragraph 41.

17 42. Defendant denies the allegations in paragraph 42 in their entirety.

18 43. Defendant admits that the Disaster Relief Policy was created in 2017, and when it
19 was created included, among other language, the following: “A declared emergency or natural
20 disaster shall be proclaimed by either the President of the United States, a state Governor or
21 other elected official, and if local leadership (DVP/Palmer) deems it appropriate.”

22 44. Defendant admits that the Disaster Relief Policy was revised and, as of January
23 2020, included, among other language, the following: “A declared emergency or natural disaster
24 shall be proclaimed by either the President of the United States, a state Governor or other elected
25 official, or if local leadership (DVP/Palmer) deems it appropriate.” This change was made so
26 that local leadership could make the determination to declare an emergency or natural disaster

1 even if there was no proclamation from the President of the United States, a state Governor or
2 other elected official. Except as expressly admitted, Defendant denies the allegations in
3 paragraph 44.

4 45. Defendant denies the allegations in paragraph 45 in their entirety.

5 46. Defendant admits as of January 2020, the Disaster Relief Policy provided that
6 local leadership and the Disaster Governance Council had discretion to declare “on a case-by-
7 case basis” and “dependent on the severity of the disaster and location” an “emergency time
8 frame” and the “affected facility or business office.” There is nothing in the Disaster Relief
9 Policy or otherwise that requires the Disaster Governance Council to declare an emergency time
10 frame or identify affected facilities. The document speaks for itself. *See* Zuckerman Decl. ¶ 3,
11 Ex. 2. Except as expressly admitted, Defendant denies the allegations in paragraph 46.

12 47. Defendant admits that it did not specifically predict the COVID-19 pandemic
13 would occur in March 2020. Except as expressly admitted, the allegations in paragraph 47 are
14 not factual allegations and/or are legal conclusions or argument for which an answer is not
15 required. To the extent the paragraph contains factual allegations, Defendant denies the
16 allegations in paragraph 47.

17 48. The allegations in paragraph 48 are not factual allegations and/or are legal
18 conclusions or argument for which an answer is not required. To the extent the paragraph
19 contains factual allegations, Defendant denies the allegations in paragraph 48.

20 49. Defendant admits President Trump declared a national emergency on March 13,
21 2020. Defendant lacks knowledge or information sufficient to form a belief about the truth of
22 the remaining allegations contained in paragraph 49, and on that basis, denies the allegations
23 contained therein in their entirety.

24 50. Defendant lacks knowledge or information sufficient to form a belief about the
25 truth of the allegations contained in paragraph 50, and on that basis, denies the allegations
26 contained therein in their entirety.

ANSWER TO SECOND AMENDED
COMPLAINT (No. 2:20-cv-01733-JLR) –11

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1 51. Defendant admits that DaVita maintains a business office in Washington state
2 located in Federal Way. Except as expressly admitted, Defendant lacks knowledge or
3 information sufficient to form a belief about the truth of the remaining allegations contained in
4 paragraph 51, and on that basis, denies the allegations contained therein in their entirety.

5 52. Defendant admits that as of March 2020, some business office employees who
6 could work remotely were allowed to work remotely and did work remotely. Plaintiff has
7 worked remotely since 2019, including during the pandemic. He has not physically reported to
8 his assigned office since 2019. Defendant further admits its facilities and central business offices
9 are an essential healthcare service, that some business office employees continued to work in the
10 office, and that DaVita's facilities and business offices remained open and its teammates
11 continued to work and treat patients during the pandemic. DaVita's facilities and business
12 offices never closed due to the pandemic. Except as expressly admitted, Defendant denies the
13 allegations in paragraph 52.

14 53. Defendant admits that during the COVID-19 pandemic DaVita teammates in
15 business office or support function roles, including Plaintiff, are able to perform their regular
16 duties remotely. Defendant admits that during the COVID-19 pandemic that teammates working
17 directly with patients have continued to perform their regular duties as essential health care
18 workers. DaVita's patient-facing teammates are uniquely qualified to continue working during a
19 health care emergency like COVID-19 because complying with infectious disease protocols is
20 part of their training and job duties. Such teammates are trained to work with patients who may
21 have HIV/AIDS, hepatitis, and other infectious or contagious diseases. Defendant further admits
22 that some teammates were unable to work during the pandemic, such as in circumstances where
23 they contracted COVID-19, or when a family member or person they lived with or cared for
24 contracted COVID-19 and they had to quarantine, but, even then, some of these employees
25 continued their regular duties on a remote basis. Except as expressly admitted, Defendant denies
26 the allegations in paragraph 53.

1 54. Defendant admits that DaVita teammates, including Plaintiff, continued to
2 perform their regular duties and work their regular hours during the pandemic. Defendant
3 further admits that DaVita teammates are at-will employees, as the Teammate Policies provide
4 that, “Employment with DaVita is at-will. Just as all teammates have the right to end their work
5 relationship with DaVita, with or without notice, and with or without cause, so too does DaVita
6 have the same right.” *See* Zuckerman Decl. ¶ 2, Ex 1. Teammates also acknowledge: “I
7 recognize that my employment has no specific term and is at the mutual consent of myself and
8 DaVita. Accordingly, either DaVita or I can terminate my employment relationship at any time,
9 with or without cause, with or without notice.” *Id.* ¶ 5, Ex. 4. Except as expressly admitted,
10 Defendant denies the allegations in paragraph 54.

11 55. Defendant admits that some DaVita teammates inquired as to whether they would
12 be paid premium pay under the Disaster Relief Policy, but Plaintiff did not request to be paid
13 premium pay. Defendant further admits that in response it informed teammates:

14 The Disaster Relief policy was created to address situations where natural
15 disasters or emergencies prevent facilities from operating or teammates
16 from being able to perform their regular duties such as physical destruction
17 of clinics or people’s homes, damaged roadways, collapsed bridges, etc.
18 The Village has implemented this policy to help our teammates when such
19 a disaster has happened: for example, during the destruction of Hurricane
20 Harvey and Hurricane Irma. While COVID-19 has introduced complexities
21 into our operations, our centers will remain open, teammates remain able to
22 get to work, and therefore the Disaster Relief policy does not apply.

23 To address the recent questions about the policy, we have added language
24 to the policy to confirm how it operates in these circumstances. You can see
25 a statement about that here.

26 As always, the Village remains highly committed to supporting our
teammates in this new and unprecedented situation that we all find ourselves
in. It is in this spirit that Javier announced the Village Lives Award. It is
also why we made the investment many years ago to offer back-up child
care, and we remain committed to provide support to teammates who are in
need through the DaVita Village Network. We are all one Village working
hard together, to provide great care to our patients.

1 Except as expressly admitted, Defendant denies the allegations in paragraph 55.

2 56. See response to duplicative paragraph 47.

3 57. Defendant admits the Disaster Relief Policy did not apply to the COVID-19
4 pandemic and informed all U.S. teammates on March 27, 2020 that it did not apply, including by
5 stating:

6 The Disaster Relief Policy does not apply to the COVID-19 crisis. The Disaster
7 Relief Policy applies only when teammates are unable to perform their regular
8 duties. The policy is effective upon a decision by local leadership and the
9 Disaster Governance Council that a declared emergency or natural disaster
10 prevents our facilities from operating or prevents our teammates from working.
Under the COVID-19 crisis, our teammates are able to work and are essential in
either in a supporting role for our health care workers or in actually providing
healthcare services to patients.

11 Zuckerman Decl. ¶ 4, Ex. 3. As early as the end of March 2020, Plaintiff's paystubs made clear
12 he had not been paid premium pay. Except as expressly admitted, Defendant denies the
13 allegations in paragraph 57.

14 58. Defendant admits the Disaster Relief Policy did not apply to the COVID-19
15 pandemic, and the Disaster Governance Council did not meet because the policy was not
16 applicable. Defendant admits that teammates were not paid premium pay pursuant to the
17 Disaster Relief Policy for the COVID-19 pandemic because the policy was inapplicable.
18 Defendant admits that teammates continued to perform their regular duties and work their
19 regular hours during the pandemic. *See also* Zuckerman Decl. ¶ 4, Ex. 3. Except as expressly
20 admitted, Defendant denies the allegations in paragraph 58.

21 59. Defendant denies the allegations contained in paragraph 59 in their entirety. The
22 Disaster Relief Policy is effective upon a decision by local leadership and the Disaster
23 Governance Council that a declared emergency or natural disaster prevents teammates from
24 performing their regular job duties. Specifically, the Disaster Relief Policy provides that: "The
25 emergency time frame (and affected facility or business office) will be identified on a case-by-
26 case basis by local leadership (DVP, GVP and PSD) and the Disaster Governance Council,

1 dependent on the severity of the disaster and location.” See Zuckerman Decl. ¶ 4, Ex. 3. During
2 the COVID-19 pandemic, teammates continued to perform their regular job duties and facilities
3 remained open to provide essential healthcare services. No emergency time frame nor affected
4 facility or business office was identified for the COVID-19 pandemic, including for Plaintiff’s
5 assigned office. The document speaks for itself and must be read in its entirety. Except as
6 expressly admitted, Defendant denies the allegations in paragraph 59.

7 60. Defendant denies the allegations contained in paragraph 60 in their entirety.

8 61. Defendant admits the Disaster Relief Policy did not apply to the COVID-19
9 pandemic, and that teammates continued to perform their regular duties during the pandemic.
10 Defendant incorporates by reference its response in paragraph 57. See Zuckerman Decl. ¶ 4, Ex.
11 3. Except as expressly admitted, Defendant denies the allegations in paragraph 61.

12 62. Defendant denies the allegations in paragraph 62 in their entirety.

13 63. Defendant denies the allegations in paragraph 63 in their entirety.

14 64. Defendant denies the allegations in paragraph 64 in their entirety.

15 65. Defendant admits that on March 27, 2020, it informed all U.S. teammates that the
16 Disaster Relief Policy did not apply to the COVID-19 pandemic. Defendant incorporates by
17 reference its response to paragraph 57. See Zuckerman Decl. ¶ 4, Ex. 3. Defendant also held a
18 “Voice of the Village” call, which all teammates were invited to attend, which explained to
19 teammates that the Disaster Relief Policy did not apply. Defendant admits that it inserted the
20 language in the policy. The document speaks for itself. Zuckerman Decl. ¶ 4, Ex. 3. Except as
21 expressly admitted, Defendant denies the allegations in paragraph 65.

22 66. Defendant admits that it inserted the language in the policy. The document speaks
23 for itself. Zuckerman Decl. ¶ 4, Ex. 3. Except as expressly admitted, Defendant denies the
24 allegations in paragraph 66.

25 67. Defendant denies the allegations in paragraph 67 in their entirety.
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II. PARTIES

68. Defendant admits Plaintiff is an individual. Defendant lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations contained in paragraph 68, and on that basis, denies the allegations contained therein in their entirety.

69. Defendant admits TRC is incorporated under California law and its principal place of business is in Colorado. Except as expressly admitted, Defendant denies the allegations in paragraph 69.

70. Defendant admits its parent company, DaVita Inc., is incorporated under Delaware law and its headquarters are located in Colorado.

III. JURISDICTION AND VENUE

71. Defendant denies there are “Defendant Class Members.” Defendant admits it does business in King County, Washington. Except as expressly admitted, Defendant denies the allegations in paragraph 71.

72. Defendant denies there are “Defendant Class Members.” Defendant admits it does business in King County, Washington. Except as expressly admitted, Defendant denies the allegations and legal conclusion in paragraph 72.

73. Defendant admits it removed the action under the Class Action Fairness Act.

74. Defendant admits venue is proper.

IV. ALLEGATIONS COMMON TO PLAINTIFF AND THE CLASS AGAINST THE DEFENDANT AND THE CLASS OF DEFENDANTS

75. Defendant admits that Plaintiff and some putative class members are employed by TRC, and that DaVita is the parent company of TRC. Except as expressly admitted, Defendant denies the allegations in paragraph 75.

1 76. Defendant admits many TRC employees continued working after January 31,
2 2020. Except as expressly admitted, Defendant denies the allegations in paragraph 76.

3 77. Defendant denies the allegations in paragraph 77 in their entirety.

4 78. Defendant denies the allegations in paragraph 78 in their entirety.

5 79. Defendant denies the allegations in paragraph 79 in their entirety.

6
7 **V. CLASS ALLEGATIONS AS TO PLAINTIFF CLASS**

8 80. The allegations in paragraph 80 are not factual allegations and/or are legal
9 conclusions or argument for which an answer is not required. To the extent the paragraph
10 contains factual allegations, Defendant denies the allegations in paragraph 80.

11 81. The allegations in paragraph 81 are not factual allegations and/or are legal
12 conclusions or argument for which an answer is not required. To the extent the paragraph
13 contains factual allegations, Defendant denies the allegations in paragraph 81.

14 a. The allegations in paragraph 81(a) are not factual allegations and/or are
15 legal conclusions or argument for which an answer is not required. To the extent the paragraph
16 contains factual allegations, Defendant denies the allegations in paragraph 81(a).

17 b. The allegations in paragraph 81(b) are not factual allegations and/or are
18 legal conclusions or argument for which an answer is not required. To the extent the paragraph
19 contains factual allegations, Defendant denies the allegations in paragraph 81(b).

20 82. The allegations in paragraph 82 are not factual allegations and/or are legal
21 conclusions or argument for which an answer is not required. To the extent the paragraph
22 contains factual allegations, Defendant denies the allegations in paragraph 82.

23 83. The allegations in paragraph 83 are not factual allegations and/or are legal
24 conclusions or argument for which an answer is not required. To the extent the paragraph
25 contains factual allegations, Defendant denies the allegations in paragraph 83.

1 a. The allegations in paragraph 83(a) are not factual allegations and/or are
2 legal conclusions or argument for which an answer is not required. To the extent the paragraph
3 contains factual allegations, Defendant denies the allegations in paragraph 83(a).

4 b. The allegations in paragraph 83(b) are not factual allegations and/or are
5 legal conclusions or argument for which an answer is not required. To the extent the paragraph
6 contains factual allegations, Defendant denies the allegations in paragraph 83(b).

7 84. The allegations in paragraph 84 are not factual allegations and/or are legal
8 conclusions or argument for which an answer is not required. To the extent the paragraph
9 contains factual allegations, Defendant denies the allegations in paragraph 84.

10 85. The allegations in paragraph 85 are not factual allegations and/or are legal
11 conclusions or argument for which an answer is not required. To the extent the paragraph
12 contains factual allegations, Defendant denies the allegations in paragraph 85.

13 86. The allegations in paragraph 86 are not factual allegations and/or are legal
14 conclusions or argument for which an answer is not required. To the extent the paragraph
15 contains factual allegations, Defendant denies the allegations in paragraph 86.

16 87. The allegations in paragraph 87 are not factual allegations and/or are legal
17 conclusions or argument for which an answer is not required. To the extent the paragraph
18 contains factual allegations, Defendant denies the allegations in paragraph 87.

19 88. The allegations in paragraph 88 are not factual allegations and/or are legal
20 conclusions or argument for which an answer is not required. To the extent the paragraph
21 contains factual allegations, Defendant denies the allegations in paragraph 88.

22 89. The allegations in paragraph 89 are not factual allegations and/or are legal
23 conclusions or argument for which an answer is not required. To the extent the paragraph
24 contains factual allegations, Defendant denies the allegations in paragraph 89.
25
26

1 90. The allegations in paragraph 90 are not factual allegations and/or are legal
2 conclusions or argument for which an answer is not required. To the extent the paragraph
3 contains factual allegations, Defendant denies the allegations in paragraph 90.

4 91. The allegations in paragraph 91 are not factual allegations and/or are legal
5 conclusions or argument for which an answer is not required. To the extent the paragraph
6 contains factual allegations, Defendant denies the allegations in paragraph 91.

7 92. The allegations in paragraph 92 are not factual allegations and/or are legal
8 conclusions or argument for which an answer is not required. To the extent the paragraph
9 contains factual allegations, Defendant denies the allegations in paragraph 92.

10
11 **VI. CLASS ALLEGATIONS AS TO THE DEFENDANTS CLASS**

12 93. Defendant admits DaVita is the parent company of TRC. Defendant admits it
13 uses the term “village” to refer to the DaVita community. To the extent the paragraph contains
14 factual allegations, and except as expressly admitted, Defendant denies the allegations in
15 paragraph 93. The allegations in paragraph 93 are not factual allegations and/or are legal
16 conclusions or argument for which an answer is not required

17 94. The allegations in paragraph 94 are not factual allegations and/or are legal
18 conclusions or argument for which an answer is not required. To the extent the paragraph
19 contains factual allegations, Defendant denies the allegations in paragraph 94.

20 a. The allegations in paragraph 94(a) are not factual allegations and/or are
21 legal conclusions or argument for which an answer is not required. To the extent the paragraph
22 contains factual allegations, Defendant denies the allegations in paragraph 94(a).

23 b. The allegations in paragraph 94(b) are not factual allegations and/or are
24 legal conclusions or argument for which an answer is not required. To the extent the paragraph
25 contains factual allegations, Defendant denies the allegations in paragraph 94(b).

1 c. The allegations in paragraph 94(c) are not factual allegations and/or are
2 legal conclusions or argument for which an answer is not required. To the extent the paragraph
3 contains factual allegations, Defendant denies the allegations in paragraph 94(c).

4 95. The allegations in paragraph 95 are not factual allegations and/or are legal
5 conclusions or argument for which an answer is not required. To the extent the paragraph
6 contains factual allegations, Defendant denies the allegations in paragraph 95.

7 96. The allegations in paragraph 96 are not factual allegations and/or are legal
8 conclusions or argument for which an answer is not required. To the extent the paragraph
9 contains factual allegations, Defendant denies the allegations in paragraph 96.

10 97. The allegations in paragraph 97 are not factual allegations and/or are legal
11 conclusions or argument for which an answer is not required. To the extent the paragraph
12 contains factual allegations, Defendant denies the allegations in paragraph 97.

13 a. The allegations in paragraph 97(a) are not factual allegations and/or are
14 legal conclusions or argument for which an answer is not required. To the extent the paragraph
15 contains factual allegations, Defendant denies the allegations in paragraph 97(a).

16 b. The allegations in paragraph 97(b) are not factual allegations and/or are
17 legal conclusions or argument for which an answer is not required. To the extent the paragraph
18 contains factual allegations, Defendant denies the allegations in paragraph 97(b).

19 98. The allegations in paragraph 98 are not factual allegations and/or are legal
20 conclusions or argument for which an answer is not required. To the extent the paragraph
21 contains factual allegations, Defendant denies the allegations in paragraph 98.

22 99. The allegations in paragraph 99 are not factual allegations and/or are legal
23 conclusions or argument for which an answer is not required. To the extent the paragraph
24 contains factual allegations, Defendant denies the allegations in paragraph 99.

1 100. The allegations in paragraph 100 are not factual allegations and/or are legal
2 conclusions or argument for which an answer is not required. To the extent the paragraph
3 contains factual allegations, Defendant denies the allegations in paragraph 100.

4 101. The allegations in paragraph 101 are not factual allegations and/or are legal
5 conclusions or argument for which an answer is not required. To the extent the paragraph
6 contains factual allegations, Defendant denies the allegations in paragraph 101.

7 102. The allegations in paragraph 102 are not factual allegations and/or are legal
8 conclusions or argument for which an answer is not required. To the extent the paragraph
9 contains factual allegations, Defendant denies the allegations in paragraph 102.

10 103. The allegations in paragraph 103 are not factual allegations and/or are legal
11 conclusions or argument for which an answer is not required. To the extent the paragraph
12 contains factual allegations, Defendant denies the allegations in paragraph 103.

13 104. The allegations in paragraph 104 are not factual allegations and/or are legal
14 conclusions or argument for which an answer is not required. To the extent the paragraph
15 contains factual allegations, Defendant denies the allegations in paragraph 104.

16 105. The allegations in paragraph 105 are not factual allegations and/or are legal
17 conclusions or argument for which an answer is not required. To the extent the paragraph
18 contains factual allegations, Defendant denies the allegations in paragraph 105.

19
20 **COUNT I - BREACH OF CONTRACT**

21 106. Defendant incorporates by reference the foregoing paragraphs of this Answer.

22 107. Defendant admits its teammates are provided the Teammates Policies handbook.
23 Except as expressly admitted, the remaining allegations in paragraph 107 are not factual
24 allegations and/or are legal conclusions or argument for which an answer is not required. To the
25 extent the paragraph contains factual allegations, Defendant denies the allegations in paragraph
26 107.

ANSWER TO SECOND AMENDED
COMPLAINT (No. 2:20-cv-01733-JLR) –21

Perkins Coie LLP
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1 108. The allegations in paragraph 108 are not factual allegations and/or are legal
2 conclusions or argument for which an answer is not required. To the extent the paragraph
3 contains factual allegations, Defendant denies the allegations in paragraph 108.

4 109. The allegations in paragraph 109 are not factual allegations and/or are legal
5 conclusions or argument for which an answer is not required. To the extent the paragraph
6 contains factual allegations, Defendant denies the allegations in paragraph 109.

7 110. The allegations in paragraph 110 are not factual allegations and/or are legal
8 conclusions or argument for which an answer is not required. To the extent the paragraph
9 contains factual allegations, Defendant denies the allegations in paragraph 110.

10 111. The allegations in paragraph 111 are not factual allegations and/or are legal
11 conclusions or argument for which an answer is not required. To the extent the paragraph
12 contains factual allegations, Defendant denies the allegations in paragraph 111.

13 112. The allegations in paragraph 112 are not factual allegations and/or are legal
14 conclusions or argument for which an answer is not required. To the extent the paragraph
15 contains factual allegations, Defendant denies the allegations in paragraph 112.

16 113. The allegations in paragraph 113 are not factual allegations and/or are legal
17 conclusions or argument for which an answer is not required. To the extent the paragraph
18 contains factual allegations, Defendant denies the allegations in paragraph 113.

19 114. The allegations in paragraph 114 are not factual allegations and/or are legal
20 conclusions or argument for which an answer is not required. To the extent the paragraph
21 contains factual allegations, Defendant denies the allegations in paragraph 114.

22
23 **COUNT II - GOOD FAITH AND FAIR DEALING**

24 115. Defendant incorporates by reference the foregoing paragraphs of this Answer.
25
26

1 116. The allegations in paragraph 116 are not factual allegations and/or are legal
2 conclusions or argument for which an answer is not required. To the extent the paragraph
3 contains factual allegations, Defendant denies the allegations in paragraph 116.

4 117. Defendant admits the January 2020 “Teammate Policies” handbook included a
5 “Disaster Relief Policy.” This policy speaks for itself. Zuckerman Decl. ¶ 3, Ex. 2. Defendant
6 further admits its teammates receive and review the policies. Except as expressly admitted,
7 Defendant denies the allegations in paragraph 117.

8 118. Defendant denies the allegations in paragraph 118 in their entirety.

9 119. Defendant denies the allegations in paragraph 119 in their entirety.

10 120. Defendant denies the allegations in paragraph 120 in their entirety.

11 121. Defendant denies the allegations in paragraph 121 in their entirety.

12 122. The allegations in paragraph 122 are not factual allegations and/or are legal
13 conclusions or argument for which an answer is not required. To the extent the paragraph
14 contains factual allegations, Defendant denies the allegations in paragraph 122.

15
16 **COUNT III - PROMISSORY ESTOPPEL**

17 123. Defendant incorporates by reference the foregoing paragraphs of this Answer.

18 124. Defendant admits the January 2020 “Teammate Policies” handbook included a
19 “Disaster Relief Policy.” This policy speaks for itself. Zuckerman Decl. ¶ 3, Ex. 2. Defendant
20 further admits the slogan “We Said, We Did” appears in internal communications. Except as
21 expressly admitted, Defendant denies the allegations in paragraph 124.

22 125. Defendant admits employees acknowledge they are “expected to read, understand
23 and adhere to [Defendant’s] policies,” including the Teammate Policies, Code of Conduct and
24 DaVita Compliance Program and any changes to them. The document speaks for itself.
25 Zuckerman Decl. ¶ 5, Ex. 4. Except as expressly admitted, Defendant denies the allegations in
26 paragraph 125.

1 126. The allegations in paragraph 126 are not factual allegations and/or are legal
2 conclusions or argument for which an answer is not required. To the extent the paragraph
3 contains factual allegations, Defendant denies the allegations in paragraph 126.

4 127. The allegations in paragraph 127 are not factual allegations and/or are legal
5 conclusions or argument for which an answer is not required. To the extent the paragraph
6 contains factual allegations, Defendant denies the allegations in paragraph 127.

7 128. The allegations in paragraph 128 are not factual allegations and/or are legal
8 conclusions or argument for which an answer is not required. To the extent the paragraph
9 contains factual allegations, Defendant denies the allegations in paragraph 128.

10 129. The allegations in paragraph 129 are not factual allegations and/or are legal
11 conclusions or argument for which an answer is not required. To the extent the paragraph
12 contains factual allegations, Defendant denies the allegations in paragraph 129.

13 130. The allegations in paragraph 130 are not factual allegations and/or are legal
14 conclusions or argument for which an answer is not required. To the extent the paragraph
15 contains factual allegations, Defendant denies the allegations in paragraph 130.

16 131. The allegations in paragraph 131 are not factual allegations and/or are legal
17 conclusions or argument for which an answer is not required. To the extent the paragraph
18 contains factual allegations, Defendant denies the allegations in paragraph 131.

19 132. The allegations in paragraph 132 are not factual allegations and/or are legal
20 conclusions or argument for which an answer is not required. To the extent the paragraph
21 contains factual allegations, Defendant denies the allegations in paragraph 132.

22 133. The allegations in paragraph 133 are not factual allegations and/or are legal
23 conclusions or argument for which an answer is not required. To the extent the paragraph
24 contains factual allegations, Defendant denies the allegations in paragraph 133.
25
26

1 134. The allegations in paragraph 134 are not factual allegations and/or are legal
2 conclusions or argument for which an answer is not required. To the extent the paragraph
3 contains factual allegations, Defendant denies the allegations in paragraph 134.

4 135. The allegations in paragraph 135 are not factual allegations and/or are legal
5 conclusions or argument for which an answer is not required. To the extent the paragraph
6 contains factual allegations, Defendant denies the allegations in paragraph 135.

7
8 **COUNT IV - UNJUST ENRICHMENT**

9 136. Defendant incorporates by reference the foregoing paragraphs of this Answer.

10 137. The allegations in paragraph 137 are not factual allegations and/or are legal
11 conclusions or argument for which an answer is not required. To the extent the paragraph
12 contains factual allegations, Defendant denies the allegations in paragraph 137.

13 138. The allegations in paragraph 138 are not factual allegations and/or are legal
14 conclusions or argument for which an answer is not required. To the extent the paragraph
15 contains factual allegations, Defendant denies the allegations in paragraph 138.

16 139. The allegations in paragraph 139 are not factual allegations and/or are legal
17 conclusions or argument for which an answer is not required. To the extent the paragraph
18 contains factual allegations, Defendant denies the allegations in paragraph 139.

19 140. The allegations in paragraph 140 are not factual allegations and/or are legal
20 conclusions or argument for which an answer is not required. To the extent the paragraph
21 contains factual allegations, Defendant denies the allegations in paragraph 140.

22 141. The allegations in paragraph 141 are not factual allegations and/or are legal
23 conclusions or argument for which an answer is not required. To the extent the paragraph
24 contains factual allegations, Defendant denies the allegations in paragraph 141.
25
26

1 142. The allegations in paragraph 142 are not factual allegations and/or are legal
2 conclusions or argument for which an answer is not required. To the extent the paragraph
3 contains factual allegations, Defendant denies the allegations in paragraph 142.

4 143. The allegations in paragraph 143 are not factual allegations and/or are legal
5 conclusions or argument for which an answer is not required. To the extent the paragraph
6 contains factual allegations, Defendant denies the allegations in paragraph 143.

7
8 **VII. REQUEST FOR RELIEF**

9 The remaining statements in Plaintiff's Complaint relate to Plaintiff's request for relief,
10 to which no response is required. Defendant denies that Plaintiff is entitled to recover any relief
11 whatsoever, including the relief he specifically seeks.

12
13 **VIII. AFFIRMATIVE DEFENSES**

14 By way of further answer to the Complaint, and without waiving any allegations
15 previously denied, Defendant asserts the following affirmative defenses:

- 16 1. The Complaint fails to state a claim upon which relief can be granted.
- 17 2. Plaintiff's claims are based on a policy that expressly disclaims contractual
18 obligations. *See* Zuckerman Decl. ¶ 2, Ex. 1; ¶ 3, Ex. 2; ¶ 5, Ex. 4.
- 19 3. Defendant's obligations under the policy, if any, were not due because of the
20 failure of conditions precedent. *See* Zuckerman Decl. ¶ 3, Ex. 3.
- 21 4. Plaintiff lacks standing to raise some or all of the claims of the putative Plaintiff
22 Class Members.
- 23 5. Plaintiff's claims on behalf of the putative Plaintiff Class Members are barred by
24 the Plaintiff's failure to meet all mandatory requirements of Federal Rule of Civil
25 Procedure 23.
- 26

- 1 6. The claims alleged by the Plaintiff are neither common nor typical of those, if
- 2 any, of the putative Plaintiff Class Members.
- 3 7. The Plaintiff is an inadequate representative of the putative Plaintiff Class
- 4 Members.
- 5 8. The types of claims alleged by Plaintiffs are matters in which individual questions
- 6 predominate and, accordingly, are not appropriate for class treatment.
- 7 9. Plaintiff's claims, and those of any putative Plaintiff Class Members, are barred in
- 8 whole or in part because Plaintiff and the putative Plaintiff Class Members have
- 9 received all wages and benefits to which he/they were entitled.
- 10 10. Plaintiff and/or the putative Plaintiff Class Members' claims are barred in whole
- 11 or in part by assumption of risk, contributory/comparative negligence, waiver,
- 12 consent, estoppel, laches, and/or unclean hands.
- 13 11. Plaintiff's assertion that Defendant represents a putative class of Defendant Class
- 14 Members is barred by the Plaintiff's failure to meet all mandatory requirements of
- 15 Federal Rule of Civil Procedure 23.
- 16 12. The claims alleged against Defendant are neither common nor typical of those, if
- 17 any, of the putative Defendant Class Members.
- 18 13. The named Defendant is an inadequate representative of the putative Defendant
- 19 Class Members.
- 20 14. The types of claims alleged against the putative Defendant Class Members are
- 21 matters in which individual questions predominate and, accordingly, are not
- 22 appropriate for class treatment.
- 23 15. Defendant has complied with all laws applicable to the allegations contained in
- 24 the Complaint.
- 25 16. Plaintiff has failed to mitigate damages.
- 26

- 1 17. There was no consideration for the alleged contract between the Defendant and
2 Plaintiff and/or the putative Plaintiff Class Members.
- 3 18. After any execution of the contract alleged in the Complaint, and before any
4 breach of the alleged contract, Plaintiff and/or the putative Plaintiff Class
5 Members and Defendant agreed that any alleged contract should be waived,
6 abandoned, and rescinded.
- 7 19. The alleged contract is not enforceable due to lack of mutuality of risk and
8 obligation. The alleged contract does not bind Plaintiff and/or the putative
9 Plaintiff Class Members to do anything in return for the Defendant's performance
10 of it.
- 11 20. Plaintiff and/or the putative Plaintiff Class Members, by their continued
12 employment and other conduct, released Defendant from any liability and/or
13 obligations under the alleged contract.
- 14 21. Plaintiff's equitable claims are barred because Plaintiff and/or the putative
15 Plaintiff Class Members could not have reasonably relied upon any promises of
16 Defendant to their detriment.
- 17 22. Plaintiff's equitable claims are barred because Defendant did not breach a clear
18 and unequivocal promise.
- 19 23. Plaintiff's claims are barred because any enrichment to Defendant was not unjust,
20 and the remedy sought by Plaintiff would not avoid any injustice.
- 21 24. Plaintiff's claims are barred, in whole or in part, due to insufficiency in service of
22 process because Plaintiff failed to sufficiently file and serve a timely Second
23 Amended Complaint. *See* Fed. R. Civ. P. 12(b)(5); Dkt. #37, Dkt. #40.
- 24 25. Plaintiff's claims are barred, in whole are in part, because Plaintiff failed to
25 comply with a Court order. *See* LCR 7(j); LCR 16(b)(4); Dkt. #37, Dkt. #40.
26

1 Defendant reserves the right to amend this Answer or add other affirmative defenses as
2 necessary as the case progresses.

3 **IX. PRAYER FOR RELIEF**

4 WHEREFORE, Defendant requests the Court dismiss the Complaint in its entirety, award
5 Defendant its attorneys' fees, costs, and disbursements, and award Defendant such further relief
6 as the Court may deem appropriate.

7
8 DATED: May 26, 2021

By: s/ Chelsea Dwyer Petersen
By: s/ Heather L. Shook
By: s/ Margo S. Jasukaitis
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CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury that on May 26, 2021, I electronically filed the foregoing **ANSWER TO SECOND AMENDED COMPLAINT** with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

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DATED this 26th day of May 2020 in Seattle, Washington.

s/ Kyle Koats
Kyle Koats, Legal Practice Assistant